

The Honorable _____

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN A. GLASSER, AS TRUSTEE OF THE
YELLOWSTONE CLUB LIQUIDATING
TRUST

Plaintiff,

v.

JESSICA T. BLIXSETH and JTB, LLC,
Defendants.

No. _____

**DECLARATION OF ATHANASIOS
BASDEKIS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

ATHANASIOS BASDEKIS declares as follows:

1. I am an attorney admitted to practice in the Bars of the States of New York, Virginia, Maryland, and West Virginia and the District of Columbia.

2. I am a partner in the firm of Bailey & Glasser, LLP, which has represented the Yellowstone Club Liquidating Trust (the "Trust") since late 2009.

3. I have personal knowledge of the facts stated herein and, if called upon to testify, I could and would testify to the facts stated herein.

4. By order dated June 2, 2009 (the "Confirmation Order"), the United States Bankruptcy Court for the District of Montana (the "Montana Bankruptcy Court") confirmed the

DECLARATION OF ATHANASIOS BASDEKIS
IN SUPPORT OF PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION – 1

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1 Third Amended Joint Chapter 11 Plan (the “Confirmed Plan”) of Yellowstone Mountain Club, LLC
2 and its affiliated debtors (the “Debtors”). A copy of the Confirmation Order and Confirmed Plan
3 (without Exhibits and Schedules) are attached hereto as Exhibits A and B, respectively.

4 5. The Trust was formed pursuant to the Confirmed Plan.

5 6. Since its formation in or about June 2009, the Trust has actively litigated a variety of
6 causes of action against Timothy L. Blixseth and various entities he owns and controls.

7 7. Among the causes of action the Trust either succeeded to pursuant to the Confirmed
8 Plan or commenced thereafter as contemplated in the Confirmed Plan were the following adversary
9 proceedings before the Montana Bankruptcy Court:

10 a. An adversary proceeding styled Blixseth v. Kirschner (In re Yellowstone
11 Mountain Club, LLC), Chapter 11 Case No. 08-61570-11, Adv. Proc. No. 09-00014 (Bankr.
12 D. Mont.) (the “Blixseth Fraudulent Transfer Action”), alleging, among other counterclaims,
13 fraudulent transfer claims against Mr. Blixseth under Sections 544, 548, and 550 of the United
14 States Bankruptcy Code and the Montana Uniform Fraudulent Transfer Act;

15 b. An adversary proceeding styled Kirschner v. Tamarindo, LLC (In re
16 Yellowstone Mountain Club, LLC), Chapter 11 Case No. 08-61570-11, Adv. Proc. No. 09-
17 00064 (hereinafter referred to as the “Tamarindo Fraudulent Transfer Action”), alleging
18 fraudulent transfer claims against Tamarindo, LLC and Mr. Blixseth under Sections 544, 548,
19 and 550 of the Bankruptcy Code and the Montana Uniform Fraudulent Transfer Law; and

20 c. An adversary proceeding styled Kirschner v. Desert Ranch LLLP (In re
21 Yellowstone Mountain Club, LLC), Chapter 11 Case No. 08-61570-11, Adv. Proc. No. 10-
22 00015 (hereinafter referred to as the “Desert Ranch Fraudulent Transfer Action”), alleging
23 fraudulent transfer claims against Desert Ranch LLLP under Sections 544, 548, and 550 of
24 the Bankruptcy Code and the Montana Uniform Fraudulent Transfer Law.

1 8. On August 16, 2010, after fourteen days of trial during which it heard more than two
2 dozen witnesses testify and admitted hundreds of documents into evidence, the Montana Bankruptcy
3 Court entered a 135-page Memorandum of Decision in the Blixseth Fraudulent Transfer Action
4 finding against Mr. Blixseth on, among other counterclaims, the Trust's fraudulent transfer claims
5 under Sections 544(b), 548, and 550 of the Bankruptcy Code. The opinion and judgment of the
6 Montana Bankruptcy Court is published at 436 B.R. 598.

7 9. Jessica T. Blixseth was present at times in the courtroom during the aforementioned
8 trial, as well as at other hearings in other litigation between the Trust and Mr. Blixseth.

9 10. The Montana Bankruptcy Court entered its Final Judgment (the "Montana
10 Judgment") against Mr. Blixseth on December 5, 2012 in the amount of \$40,992,210.81. A copy of
11 the Montana Judgment is attached hereto as Exhibit C.

12 11. The Desert Ranch Fraudulent Transfer Action remains pending before the Montana
13 Bankruptcy Court.

14 12. A copy of the Complaint initiating the Desert Ranch Fraudulent Transfer Action is
15 attached hereto as Exhibit D.

16 13. Upon information and belief and as alleged in the Desert Ranch Fraudulent Transfer
17 Action, the assets Mr. Blixseth transferred to Desert Ranch included all his direct or indirect
18 ownership interests in an entity, and/or the assets of that entity, known as Western Air & Water,
19 LLC, an Oregon limited liability corporation formerly known as Western Aviation and Marine,
20 which purportedly owned and, upon information and belief, still owns, among other things, a 156-
21 foot yacht known as "The Piano Bar," collectively the subjects of this fraudulent transfer action. *See*
22 Exhibit D at ¶ 17.e.

23 14. The Tamarindo Fraudulent Transfer Action remains pending, although the United
24 States District Court for the District of Montana (the "Montana District Court"), after withdrawing
25

1 the reference of the Tamarindo Fraudulent Transfer Action, entered an order dated February 3, 2014
2 (the "Contempt Order") awarding judgment to the Trust upon the fraudulent transfer claims alleged
3 in the Complaint as a contempt sanction. Copies of the Complaint initiating the Tamarindo
4 Fraudulent Transfer Action and the Montana District Court's Contempt Order are attached hereto as
5 Exhibits E and F.

6 15. After filing the Tamarindo and Desert Ranch Fraudulent Transfer Actions, the Trust
7 separately moved in each adversary proceeding for entry of preliminary injunctions preventing Mr.
8 Blixseth from further transferring the assets subject to those fraudulent transfer actions.

9 16. Shortly after the filing of the first such motion in the Tamarindo Fraudulent Transfer
10 Action, Mr. Blixseth entered into a number of stipulated orders, agreeing not to transfer the
11 Tamarindo assets. A copy of the final stipulated order (the "Tamarindo Injunction") is attached
12 hereto as Exhibit G.

13 17. Because of the existence of the Tamarindo Injunction, the Montana Bankruptcy Court
14 subsequently denied the Trust's requested injunctive relief in the Desert Ranch Fraudulent Transfer
15 Action. A copy of the Montana Bankruptcy Court's Memorandum of Decision denying the Trust's
16 preliminary injunction motion in the Desert Ranch Fraudulent Transfer Action is attached hereto as
17 Exhibit H.

18 18. In the summer of 2013, the Trust discovered that Mr. Blixseth had sold the property
19 subject to the Tamarindo Injunction.

20 19. Thereafter, the Trust moved on October 23, 2013 in the Tamarindo Fraudulent
21 Transfer Action for entry of an order holding Mr. Blixseth in contempt for violating the Tamarindo
22 Injunction.

23 20. Separately, on November 22, 2013, the Trust also moved for entry of a new
24 preliminary injunction in the Desert Ranch Fraudulent Transfer Action.

1 21. During the discovery relating to the Trust's contempt and preliminary injunction
2 motions, Mr. Blixseth testified under oath in a deposition conducted on December 10, 2013
3 regarding the status of his properties and assets, including those held by Desert Ranch or its
4 affiliates, and testified therein that Desert Ranch had transferred Western Air & Water to his wife,
5 Defendant Jessica T. Blixseth. A copy of the transcript of the deposition is attached hereto as
6 Exhibit I.

7 22. Documents filed with the Secretary of State of the State of Oregon, the state of
8 organization of Western Air & Water, discloses that (a) the membership interests in Western Air &
9 Water were ultimately transferred to Defendant JTB, LLC and (b) Defendant Jessica T. Blixseth
10 became the sole manager of Western Air & Water. Copies of the Oregon Secretary of State's
11 website page for Western Air & Water and the publicly available documents thereon are attached
12 hereto as Exhibit J.

13 23. On December 13, 2013, the Montana Bankruptcy Court entered a memorandum and
14 order granting the Trust's motion for a new preliminary injunction (the "Desert Ranch Injunction
15 Decision") and entered an asset-freeze injunction (the "Desert Ranch Injunction") in the Desert
16 Ranch Fraudulent Transfer Action barring Desert Ranch and Mr. Blixseth from transferring or
17 otherwise disposing of any of their assets with a value in excess of \$5,000 without obtaining the
18 prior approval of the Montana Bankruptcy Court until the Desert Ranch Fraudulent Transfer Action
19 is resolved or Mr. Blixseth either fully satisfies or bonds the Montana Judgment. Copies of the
20 Desert Ranch Injunction Decision and the Desert Ranch Injunction are attached hereto as Exhibits K
21 and L, respectively.

22 24. Separately, on December 23, 2013, the Montana District Court held an evidentiary
23 hearing upon the Trust's motion to hold Mr. Blixseth in contempt in the Tamarindo Fraudulent
24 Transfer Action. A copy of the hearing transcript is attached hereto as Exhibit M.

1 25. On February 3, 2014, the Montana District Court entered a written memorandum and
2 order finding Mr. Blixseth in contempt and imposing sanctions therefor (the "Contempt Order"). A
3 copy of the Contempt Order is attached hereto as Exhibit F.

4 26. Mr. Blixseth appealed the Montana Judgment, the Contempt Order, and the Desert
5 Ranch Injunction. On October 9, 2014, the United States Court of Appeals for the Ninth Circuit
6 issued a six-page Memorandum (not for publication) affirming the Contempt Order. A copy of its
7 Memorandum is attached hereto as Exhibit N. The two other appeals remain pending before the
8 United States Court of Appeals for the Ninth Circuit.

9 27. In addition to the three adversary proceedings before the Montana courts, the Trust
10 also commenced an action against Mr. Blixseth in the United States District Court for the Central
11 District of California (the "California District Court") to recover upon claims relating to promissory
12 notes Mr. Blixseth executed in connection with the transfer of the Debtors' cash to himself.

13 28. On June 24, 2014, the California District Court entered a Final Judgment (the
14 "California Judgment") against Mr. Blixseth in the approximate amount of \$210 million. A copy of
15 the California Judgment is attached hereto as Exhibit O.

16 29. Mr. Blixseth has appealed the California Judgment as well. That appeal also remains
17 pending before the United States Court of Appeals for the Ninth Circuit.

18 30. Neither the Montana Judgment nor the California Judgment is the subject of a stay.

19 31. The Trust has commenced and undertaken a variety of actions to execute on and
20 collect its Montana Judgment in Montana, Nevada, and New York. To date, the Trust has not
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1 discovered any significant assets that are available to satisfy the Montana Judgment, much less the
2 subsequent and much larger California Judgment.

3 Dated this 10th day of October 2014.

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6 Athanasios Basdekis

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